U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

H4

[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: MAY 19 2004

IN RE: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT: SELF-REPRESENTED

prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Interim District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded for further action.

The applicant is a native and citizen of Mexico who was found inadmissible under section 212(a)(6)(E)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(E)(i), for having knowingly encouraged, induced, assisted, abetted, or aided another alien to enter or to try to enter the United States. During September 1982, the applicant was allegedly removed from the United States. The applicant subsequently reentered the United States without inspection by an immigration officer and without first obtaining permission to reapply for admission to the United States. The applicant is married to a naturalized United States citizen. The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside in the United States with his spouse and United States citizen children.

The interim district director determined that the applicant is inadmissible to the United States under section 212(a)(6)(E)(i) of the Act. The AAO notes that the decision of the director states that the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, but then quotes the language appearing under section 212(a)(6)(E)(i) of the Act.

Further, the decision of the interim district director indicates that the applicant is eligible for a waiver under section 212(h) of the Act. The AAO notes that section 212(h) provides waiver provisions for violations of section 212(a)(2)(A) of the Act. However, since it appears that the interim district director determined that the applicant is inadmissible pursuant to section 212(a)(6)(E)(i) of the Act, the applicable waiver provisions are found under section 212(d)(11) of the Act. Under section 212(d)(11), the relationship between the applicant and those aliens he knowingly encouraged, induced, assisted, abetted, or aided to enter or to try to enter the United States is relevant. If the aliens encouraged, induced, assisted, abetted, or aided were related to the applicant, he may be eligible for a waiver. The decision of the interim district director provides no discussion of the relationship between the applicant and the smuggled aliens. The interim district director denied the Form I-212 application simply stating that because the applicant is inadmissible pursuant to section 212(a)(6)(E)(i) of the Act, the Form I-212 application must be denied. *See* Decision of the Interim District Director, dated September 17, 2003.

In addition, the interim district director erred by failing to engage in a weighing of the favorable and unfavorable factors present in the application. The limited discussion offered in the decision focuses on factors relevant to adjudication of a Form I-601 Application for Waiver of Grounds of Excludability rather than a Form I-212. Based on the findings of the interim district director, the applicant may require a Form I-601 waiver, however the instant application is a Form I-212 and should be evaluated accordingly.

Approval of a Form I-212 Application for Permission to Apply for Admission after Deportation or Removal requires that the favorable aspects of the applicant's case outweigh the unfavorable aspects.

> In determining whether the consent required by statute should be granted, all pertinent circumstances relating to the applicant which are set forth in the record of proceedings are considered. These include but are not limited to the basis for deportation, recency of deportation, length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitation, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and others, and the need for his services in the United States.

Matter of Tin, 14 I&N Dec. 373, 374 (Comm. 1973).

The decision of the interim district director does not engage in a weighing of the favorable and unfavorable factors as required. Furthermore, the decision alleges, but fails to substantiate the claim that the applicant was removed from the United States. Whether or not the applicant was previously removed has direct bearing on the need for and adjudication of the Form I-212 application.

For all of the reasons cited above, the appeal will be remanded to the interim district director for clarification and additional evidence, and entry of a new decision which, if unfavorable to the applicant, is to be certified to the AAO for review.

ORDER: The appeal is remanded for action as discussed above.